

UNIFORM SYSTEM OF BANKRUPTCY

MAY 29, 1934.—Ordered to be printed

Mr. SUMNERS of Texas, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany H.R. 5884]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the Senate to the bill (H.R. 5884) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved July 1, 1898, and acts amendatory thereof and supplementary thereto having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendments of the Senate numbered 2, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 29, 32, and 34, and agree to the same.

Amendment numbered 1:

That the House recede from its disagreement to the amendment of the Senate numbered 1, and agree to the same with an amendment as follows:

Strike out the Senate amendment numbered 1 and insert in lieu thereof the following: *whether filed before or after this section becomes effective, provided the present operations of such corporation do not exclude it hereunder, and whether or not the corporation has been adjudicated a bankrupt,* and the Senate agree to the same.

Amendment numbered 3:

That the House recede from its disagreement to the amendment of the Senate numbered 3, and agree to the same with an amendment as follows:

Strike out the Senate amendment numbered 3 and insert in lieu thereof the following: *or in any territorial jurisdiction in the State in which it was incorporated. The court shall upon petition transfer such proceedings to the territorial jurisdiction where the interests of all the parties will be best subserved;* and the Senate agree to the same.

Amendment numbered 14:

That the House recede from its disagreement to the amendment of the Senate numbered 14, and agree to the same with an amendment, as follows:

Strike out the Senate amendment numbered 14 and insert in lieu thereof the following:

In case an executory contract or unexpired lease of real estate shall be rejected pursuant to direction of the judge given in a proceeding instituted under this section, or shall have been rejected by a trustee or receiver in bankruptcy or receiver in equity, in a proceeding pending prior to the institution of a proceeding under this section any person injured by such rejection shall, for all purposes of this section and of the reorganization plan, its acceptance and confirmation, be deemed to be a creditor. The claim of a landlord for injury resulting from the rejection of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall be treated as a claim ranking on a parity with debts which would be provable under section 63 (a) of this act, but shall be limited to an amount not to exceed the rent, without acceleration, reserved by said lease for the three years next succeeding the date of surrender of the premises to the landlord or the date of reentry of the landlord, whichever first occurs, whether before or after the filing of the petition, plus unpaid rent accrued up to such date of surrender or reentry: Provided, That the court shall scrutinize the circumstances of an assignment of future rent claims and the amount of the consideration paid for such assignment in determining the amount of damages allowed assignee hereunder.

And the Senate agree to the same.

Amendment numbered 15:

That the House recede from its disagreement to the amendment of the Senate numbered 15, and agree to the same with an amendment as follows:

On page 10, line 23, of the House engrossed copy of the bill, after the word "committee", insert a colon and the following:

Provided, That the judge shall scrutinize and may disregard any limitations or provisions of any depositary agreements, trust indentures, committee or other authorizations affecting any creditor acting under this section and may enforce an accounting thereunder or restrain the exercise of any power which he finds to be unfair or not consistent with public policy and may limit any claims filed by such committee member or agent to the actual consideration paid therefor.

And the Senate agree to the same.

Amendment numbered 27:

That the House recede from its disagreement to the amendment of the Senate numbered 27, and agree to the same with an amendment as follows:

At the end of the Senate amendment strike out the period and insert a colon and the following:

Provided, however, That such personal representative shall first obtain the consent and authority of the court which has assumed jurisdiction of said estate, to invoke the relief provided by said Act of March 3, 1933. The first sentence of subdivision (m) of said section 74 is amended to read as follows: "The filing of a debtor's petition or answer seeking relief

under this section shall subject the debtor and his property, wherever located, to the exclusive jurisdiction of the court in which the order approving the petition or answer as provided in subdivision (a) is filed, and this shall include property of the debtor in the possession of a trustee under a trust deed or a mortgage, or a receiver, custodian, or other officer of any court in a pending cause, irrespective of the date of appointment of such receiver or other officer, or the date of the institution of such proceedings: Provided, That it shall not affect any proceeding in any court in which a final decree has been entered."

And the Senate agree to the same.

Amendment numbered 28:

That the House recede from its disagreement to the amendment of the Senate numbered 28, and agree to the same with an amendment as follows:

Strike out the Senate amendment numbered 28 and insert in lieu thereof the following:

SEC. 3. In the administration of the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, as amended, the district court or any judge thereof shall, in its or his discretion, so apportion appointments of receivers and trustees among persons, firms, or corporations, or attorneys therefor, within the district, eligible thereto, as to prevent any person, firm, or corporation from having a monopoly of such appointments within such district. No person shall be appointed as a receiver or trustee who is a near relative of the judge of the court making such appointment. The compensation allowed a receiver or trustee or an attorney for a receiver or trustee shall in no case be excessive or exorbitant, and the court in fixing such compensation shall have in mind the conservation and preservation of the estate of the bankrupt and the interests of the creditors therein.

And the Senate agree to the same.

Amendment numbered 30:

That the House recede from its disagreement to the amendment of the Senate numbered 30, and agree to the same with an amendment as follows:

Strike out the Senate amendment numbered 30 and insert in lieu thereof the following: *but the claim of a landlord for injury resulting from the rejection by the trustee of an unexpired lease of real estate or for damages or indemnity under a covenant contained in such lease shall in no event be allowed in an amount exceeding the rent reserved by the lease, without acceleration, for the year next succeeding the date of the surrender of the premises plus an amount equal to the unpaid rent accrued up to said date: Provided, That the court shall scrutinize the circumstances of an assignment of future rent claims and the amount of the consideration paid for such assignment in determining the amount of damages allowed assignee hereunder: Provided further, That the provisions of this clause (7) shall apply to estates pending at the time of the enactment of this amendatory Act; and the Senate agree to the same.*

Amendment numbered 31:

That the House recede from its disagreement to the amendment of the Senate numbered 31, and agree to the same with an amendment as follows:

Strike out the Senate amendment numbered 31 and insert in lieu thereof the following:

Sec. 7. Proceedings under section 77 of chapter 8, amendment to the act of July 1, 1898, entitled "An act to establish a uniform system of bankruptcy throughout the United States", as amended, approved March 3, 1933, shall not be grounds for the removal of any cause of action to the United States district court which was not removable before the passage and approval of this section, and any cause of action heretofore removed from a State court on account of this section shall be remanded to the court from which it was removed, and such order of removal vacated.

And the Senate agree to the same.

Amendment numbered 33:

That the House recede from its disagreement to the amendment of the Senate numbered 33, and agree to the same with an amendment as follows:

Strike out the Senate amendment numbered 33 and insert in lieu thereof the following:

Sec. 9. That the second sentence of subdivision (b) of section 75 of the Act of July 1, 1898, entitled "An Act to establish a uniform system of bankruptcy throughout the United States", as amended, is amended to read as follows: "The conciliation commissioner shall receive as compensation for his services, including all expenses, a fee of \$25 for each case docketed and submitted to him, to be paid out of the Treasury."

And the Senate agree to the same.

A. J. MONTAGUE,
TOM D. MCKEOWN,
FRANK OLIVER,
HATTON W. SUMNERS,
RANDOLPH PERKINS,

Managers on the part of the House.

FREDERICK VAN NUYS,
PAT McCARRAN,
DANIEL O. HASTINGS,

Managers on the part of the Senate.

STATEMENT OF THE MANAGERS ON THE PART OF THE HOUSE

The managers on the part of the House at the conference on the disagreeing votes of the two Houses on the bill (H.R. 5884) to amend an act entitled "An act to establish a uniform system of bankruptcy throughout the United States", approved July 1, 1898, and acts amendatory thereof and supplementary thereto, submit the following statement in explanation of the effect of the action agreed upon by the conferees and recommended in the accompanying conference report.

The following Senate amendments, to which the House agreed, are formal and merely improve the language of the bill: Amendments 2, 4, 6, 7, 8, 9, 10, 11, 12, 17, 18, 19, 20, 21, 22, 23, and 24.

Amendment no. 1: Amendment no. 1, as agreed upon by the conferees, makes it possible for a corporation in bankruptcy, either before or after this section becomes effective, to proceed to reorganize under this section.

Amendment no. 3: The House bill provided that proceedings under this section should be initiated before the court in whose territorial jurisdiction the corporation during the preceding 6 months had had its principal place of business or its principal assets. The Senate amendment provided that in case of controversy as to the principal place of business or the place where the principal assets are located, then the petition could be filed in the territorial jurisdiction in which the corporation was incorporated, provided that the court could transfer the proceedings to any jurisdiction where the corporation had a substantial portion of its assets if satisfied that the interests of all parties would be better subserved thereby.

The amendment, as agreed upon by the conferees, retains jurisdiction as provided in the House bill and also provides that the petition may be filed in any territorial jurisdiction in the State in which the corporation was incorporated. The court, however, is directed upon petition to transfer such proceedings to the territorial jurisdiction where the interests of all the parties will be best subserved.

Amendment no. 5: The Senate amendment, to which the House agreed, makes it unnecessary to show that the corporation has committed an act of bankruptcy within 4 months in case a prior proceeding in bankruptcy or an equity receivership is pending at the time proceedings under the reorganization section are initiated.

Amendment no. 13: Amendment no. 14, as agreed upon by the conferees, makes unnecessary the language which amendment 13 strikes out. The House therefore receded.

Amendment no. 14: Under the House bill, executory contracts, including claims for future rent, are made provable claims for the purposes of this section. The Senate amendment limited claims for future rent to an amount equal to the rent reserved by the lease for 1 year.

The amendment agreed to by conference makes any person injured by the rejection of an executory contract or unexpired lease of real

estate a creditor for the purposes of this section. The claim of the landlord for injury resulting from loss of future rents is limited to an amount not to exceed the rent reserved by the lease for 3 years next succeeding the date of surrender of the premises or the date of reentry of the landlord, whichever first occurs, plus unpaid rent accrued up to such date of surrender or reentry of the landlord. The court is directed to scrutinize the circumstances of an assignment of future rent claims and the amount of the consideration paid for such assignment in determining the amount of damages to be allowed such assignee.

Amendment no. 15: The Senate amendment provides that for the purposes of this section a creditor may act by an attorney at law as well as in person, or by duly authorized agent or committee. The House, by the conference amendment, agreed to the Senate amendment providing that a creditor may act by an attorney at law, and also provided that the judge shall scrutinize and may disregard any limitations or provisions of depository agreements which may limit any claims filed by a committee member or agent to the actual consideration which such committee member paid therefor.

Amendment no. 16: This Senate amendment, to which the House agreed, tolls the running of the statutes of limitations during the pendency of proceedings under this section.

Amendment no. 25: The House bill provides that the judge may require the trustee or trustees, or if there be no trustee, the debtor, to make any transfer or conveyance necessary to effectuate the plan of reorganization after confirmation.

The Senate amendment, to which the House agreed, includes as parties whom the court may require to make such transfers or conveyances, any mortgagee, the trustee of any obligation of the debtor, and all other proper and necessary parties.

Amendment no. 26: Senate amendment no. 26 excepts from the operation of all the provisions of the Securities Act of 1933, except the civil and criminal liability provisions thereof for fraud or misrepresentation, all securities issued pursuant to any plan of reorganization confirmed by the court and all certificates of deposit representing securities of all claims against the debtor which it is proposed to deal with under the proposed plan.

The House adopted the Senate amendment with a minor alteration of language.

Amendment no. 27: The Senate amendment amends the section of the Bankruptcy Act dealing with individual debtors which was added to the act by the amendment of March 3, 1933. It provides that such section shall include the personal representative of a deceased individual for the purpose of effecting a settlement or composition with the creditors of the estate.

The conferees agreed to the Senate amendment with the addition of the proviso that such personal representative shall first obtain the consent and authority of the court which has assumed the jurisdiction of said estate. Also the provision is added that the filing of a debtor's petition or answer seeking relief under section 74 shall subject the debtor and his property wherever located to the jurisdiction of the court and that this shall include property in possession of a trustee or receiver irrespective of the date of appointment of such receiver or other officer, provided that this amendment shall not affect any proceeding in any court in which a final decree has been entered.

Amendment no. 28: This amendment has to do with the prevention of monopolies of receiverships, trusteeships, and appointments as attorney for receiver in any district.

The amendment agreed to by the conferees provides that "the district court or any judge thereof shall in its or his discretion so apportion appointments of receivers and trustees among persons, firms, or corporations, or attorneys therefor, within the district eligible thereto as to prevent any person, firm, or corporation from having a monopoly of such appointments within such district." The appointment of a person as a receiver or trustee who is a near relative of the judge making the appointment is prohibited.

The further provision is made that the compensation allowed the receiver or trustee or his attorney shall in no case be excessive or exorbitant and the court is directed in fixing such compensation to have in mind the conservation and the preservation of the estate of the bankrupt and the interests of the creditors therein.

Amendment no. 29: Senate amendment 29 makes judgments for negligence provable claims in bankruptcy. The House agreed to the amendment.

Amendment no. 30: This amendment has to do with claims for future rent under the general bankruptcy act. As agreed upon by the conferees, such claims are permitted to be provable claims, provided that in no event shall a claim for damages be allowed in an amount exceeding the rent reserved by the lease for 1 year after surrender of the premises, plus the unpaid rent accrued to said date. The courts are directed to scrutinize the circumstances of an assignment of future rent claims and the consideration paid therefor in determining the amount of damages to be allowed an assignee. The provisions of this clause are made to apply to estates pending at the time of the enactment of this amendatory act.

Amendment no. 31: This amendment clarifies the intent of Congress that no cause of action not removable to the Federal court before the enactment of the railroad section of the Bankruptcy Act shall be removable by reason of the enactment of such section.

The House conferees agreed to the Senate amendment with the addition of a further provision requiring the remanding to the courts from which removed, all such suits heretofore removed to Federal court.

Amendment no. 32: Amendment 32 makes mandatory the appointment by the courts of bankruptcy within 30 days after the enactment of this act of a conciliation commissioner in every county having an agricultural population of 500 or more farmers for the administration of the agricultural composition section of the Bankruptcy Act enacted in March 1933.

The House agreed to this amendment.

Amendment no. 33: By the terms of this Senate amendment, the filing fee for farmers under the agricultural composition section is increased from \$10 to \$25 and the compensation of the conciliation commissioner is raised to \$25 for each case filed.

Under the amendment agreed to by the conferees, the compensation for the commissioners is increased to \$25 for each case, but the filing fee for farmers is left at \$10.

Amendment no. 34: Amendment no. 34 amends the subdivision of the agricultural composition section extending the secondary liability in case of an extension granted the principal debtor so as to include within its provision those who may have insured, or guaranteed such debts, or bonds issued on the security thereof. The House agreed to the amendment.

TOM D. McKEOWN,
A. J. MONTAGUE,
FRANK OLIVER,
HATTON W. SUMNERS,
RANDOLPH PERKINS,
Managers on the part of the House.

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